



City of Milpitas  
455 E. Calaveras Boulevard  
Engineering Division  
Special Projects Section  
Milpitas, California 95035

**May 23, 2005**

**TO:** Prospective Environmental Consultants

**RE:** City Of Milpitas Capital Improvements Projects

**SUBJECT:** Request For Proposals (RFP) to provide Environmental Services for the North Main Street Development Projects

Your firm has been contacted to inform you of the quick turn-around RFP process for Environmental Services for the City of Milpitas North Main Street Development Projects.

Please find attached for your use the following:

1. Request For Proposals (RFP) to provide Environmental Services for the North Main Street Development Projects
2. Exhibit A – North Main Street Development project site map
3. Exhibit B - Scope Of Consultant Duties And Services
4. Exhibit C – Sample North Main Street Development Projects Environmental Services Agreement

A pre-proposal meeting will be held on May 31, 2005 at the City Hall Committee Room at 455 E. Calaveras Boulevard. Proposal packets must be submitted no later than 10:00 am on June 6, 2005, at the Public Service Counter, Milpitas City Hall.

If you have questions about the documents, please contact Lissette Morales at (408) 586-3409.

Sincerely,

Mark Rogge, PE  
CIP Manager

attachments:

1. Request For Proposals (RFP) to provide Environmental Services for the North Main Street Development Projects
2. Exhibit A – North Main Street Development project site map
3. Exhibit B - Scope Of Consultant Duties And Services
4. Exhibit C – Sample North Main Street Development Projects Environmental Services Agreement



City of Milpitas  
Engineering Division  
Special Projects Section  
455 E. Calaveras Boulevard  
Milpitas, California 95035

**REQUEST FOR PROPOSALS (RFP)  
TO PROVIDE ENVIRONMENTAL SERVICES  
FOR THE NORTH MAIN STREET DEVELOPMENT PROJECTS**

**INTRODUCTION**

The City of Milpitas and the City of Milpitas Redevelopment Agency (City) is seeking the professional services of a qualified and proven Environmental / Geotechnical consulting firm or team (Consultant) for the analysis, design, and preparation of a comprehensive Risk Management Plan (RMP), specifications, cost estimates, and schedules including construction support services and post-construction support. The preparation and implementation of the Risk Management Plan shall be coordinated with the North Main Street Development Projects. The goal is to eliminate or reduce below any concern level all hazardous material, contamination or related manner, to certify the site for conventional construction activities, and for its end use as a public library.

**BACKGROUND**

**City of Milpitas**

The City has a population of approximately 65,000 and is located in the Silicon Valley, between the cities of San Jose and Fremont. Growth was experienced immediately after incorporation in 1954, when the population was 825. As the population has grown, it has become more diverse. Today, over 50 languages are spoken amongst Milpitas residents, making the City one of the most diverse in the nation.

**North Main Street Development Projects**

The North Main Street Development (NMSD) is comprised of a number of individual projects including:

- *City of Milpitas Public Library* This project involves design and construction of a new 60,000 square-foot library, including the rehabilitation and restoration of an historic grammar school building. The historic grammar school has wood floors over a crawl space. The new portion of the library will be raised floors over slab-on-grade. The library is being designed by Group 4 Architecture + Planning. Schematic Design has been approved. Design Development is underway.

- *Midtown East Parking Garage* This project involves design and construction of structured parking to serve the new Library. The parking structure will have from 240 to 300 parking spaces organized on three to four floors. The first floor will probably be slab-on-grade.
- *Midtown West Parking Garage* This project involves design and construction of structured parking to serve the new County Valley Health Center and other Midtown uses. The parking structure will have from 275 to 300 parking spaces organized on three to four floors, with commercial space along the Main Street frontage. The first floor will probably be slab-on-grade. Both Midtown East and West Parking Garages are being designed by Chong Partners. The conceptual design is currently underway.
- *Streetscape, Circulation and Utility Improvements* The streetscape in the area will be reconstructed to the Midtown Streetscape, which calls for pedestrian-friendly sidewalks with trees, and decorative lighting and signal standards. To support the new streetscape, new utilities are being installed. Streetscape improvements include North Main Street from Weller Lane to Carlo; new landscaped driveways to the East Parking garage, an new Cul-de-sac at the northern terminus of Winsor Avenue, Carlo from Main to Winsor, and Weller Lane from Abel to Main Street. The public right-of-way on the northern portion of Winsor Avenue and the eastern portion of Weller Lane are being vacated. Construction of the utility improvements have begun on portions of the former Weller Lane, Winsor Avenue, and a City parking lot beneath SR 237/Calavares Boulevard. The design of the rest of Main Street utilities are nearing completion by Harris & Associates. The streetscape design by BKF is underway.
- *Santa Clara County Valley Health Center* The County of Santa Clara is developing a 60,000 square foot health care facility. This facility would be a multi-story building, and provide a range of medical services. The site is currently owned by the City and may be sold to the County under the terms of a Disposition and Development Agreement and Purchase Agreement.
- *The Mid-Peninsula Housing Coalition Senior Housing Project.* The Mid-Peninsula Housing Coalition (MPHC) is proposing to construct up to 100 units in a senior housing development. The existing historic DeVries Home would be relocated on-site and incorporated into this development. The site is currently owned by the City and may be sold to the County under the terms of a Disposition and Development Agreement and Purchase Agreement.

The North Main Street Development projects are further described in a CEQA Environmental Impact Report, which was certified by the City Council on January 4, 2005. This report is available for download on the City's website.

The NMSD project site is located in the Redevelopment Agency area and within the Midtown Plan area of the City of Milpitas in Santa Clara County, California. The NMSD Project site is generally bound by the extension of the north edge of Weller Lane to the north, the Union Pacific Railroad to the east, Carlo Street to the south, and includes the properties with frontage on North Main Street. North Main Street transects the project site in a north to south direction.

## **AVAILABLE REPORTS**

The following reports are available upon request

- *City of Milpitas, North Main Street Development Project, Final Environmental Impact Report*, LSA Associates, Inc., October 2004
- *Geotechnical Investigation, Milpitas Library Project, Milpitas, California*, Treadwell & Rollo, 14 September 2004
- *Phase I and Limited Phase II Environmental Site Assessment, 160 Main Street, Milpitas, California*, Treadwell & Rollo, 18 August 2004
- *Soil Quality Evaluation and Geophysical Survey, Milpitas Library: Apton Parcel, Milpitas, California*, Lowney Associates, 1 October 2004
- *Soil and Ground Water Quality Evaluation, Proposed Milpitas Library Expansion Parcels Phase I, Milpitas, California*, Lowney Associates, 1 October 2004
- *Phase I Environmental Site Assessment, Proposed Parcel Additions No. 1 and 2, 230 North Main Street, Milpitas, California*, Pinnacle Environmental, Inc., 18 August 2004
- *Preliminary Title Report for APNs 028-24-014, 015, 020, 026.*
- *SCVWD Underground Service Tank Leak Investigation and follow-up reports, letters and related documents, for 130 Winsor Street, Milpitas, CA, SCVWD ID No. 06S1E07C02f, LOP No. 14-335.*
- *Schematic Design Plan for New Milpitas Library, by Group 4 Architecture + Planning.*
- *Main Street Underground Utilities Project Plans, by Harris & Associates*

## **SCOPE OF WORK**

The scope of work will consist of

- Environmental Investigation:  
The project area includes site parcels: 028-24-014, 028-24-015, 028-24-016, 028-24-017, 028-24-019, 028-24-020, 028-24-025, 028-24-026, 22-08-003, and the vacated portions of Weller Lane and Winsor Avenue. (see map)

**Please note** that the City is in the process of acquiring several parcels indicated above (Winsor parcels). The City is also negotiating relocation of two tenants. Consultants shall not contact, or disturb the owner or tenants of the private property, that has not yet been acquired. The City has released a notice of a Public Hearing to consider adopting a Resolution of Need and Necessity, along with an Order of Immediate Possession. The City

expects to possess all of the property within 90 days of June 7, 2005. Work can proceed on property that the City already owns, but may not occur on or near property not yet acquired. No work shall be done in a manner that would disrupt nearby private property owners, tenants, customers or visitors.

A qualified environmental professional shall review all relevant information about the sites and conduct an environmental investigation at the project site in accordance with (DTSC) Interim Guidance for sampling former agricultural fields (Interim Guidance) and or other standards that may apply to prepare the land for the proposed use.

Based on the size of the site, the Interim Guidance specifies that a minimum of eight composite samples should be collected from shallow soils and analyzed for potential organic and inorganic agricultural chemical residues. As specified in the Interim Guidance, any detected organic compounds or metals above naturally occurring concentrations must be evaluated in a risk assessment, and additional remedial action such as soils removal may be required, depending on the results of the environmental investigation and risk assessment. Findings shall also be incorporated into the RMP for the North Main Street Development project site.

The work shall at minimum satisfy the requirements cited in the Santa Clara Valley Water District actions, including any further requirements of the Santa Clara County Environmental Health department. Work shall comply with applicable regulatory agencies, which could include the City's Fire Department Hazardous Materials program, The Regional Water Quality Control Board, the Santa Clara Department of Environmental Health, California Department of Toxic Substances Control, or others.

- Analysis, design, and preparation of a Risk Management Plan (RMP):  
A Risk Management Plan (RMP) shall be prepared for the project site. At a minimum, the RMP shall establish soil and groundwater mitigation and control specifications for grading and construction activities at the site, including health and safety provisions for monitoring exposure to construction workers, procedures to be undertaken in the event that previously unreported contamination is discovered, and emergency procedures and responsible personnel. The RMP shall also include procedures for managing soils and groundwater removed from the site to ensure that any excavated soils and/or dewatered groundwater with contaminants are stored, managed, and disposed of in accordance with applicable regulations and permits. The RMP shall describe groundwater monitoring wells that will be affected by the construction activities, provide procedures for the proper abandonment of those wells, and provide locations for replacement monitoring wells, if warranted. The RMP shall also include an Operations and Maintenance Plan component, to ensure that health and safety measures required for future construction and maintenance at the project site shall, if necessary, be enforced in perpetuity. The RMP shall be submitted to the Milpitas Fire Department, and other regulatory agencies as required for review and approval. The RMP shall include provisions for the use, storage, disposal, and transport of hazardous materials during construction activities be performed in accordance with existing local, State, and federal hazardous materials regulations, including manifests for transport or disposal.

- Coordination with Santa Clara County Department of Environmental Health (SCCDEH) and Santa Clara Valley Water District (SCVWD):  
SCCDEH/SCVWD approval shall be incorporated into the RMP for the project site. Any requirements of SCCDEH, such as abandonment and/or replacement of groundwater monitoring wells, shall be incorporated into the RMP for the project site.

- Hazardous material abatement in structures:  
The Grammar School building will remain for future restoration and renovation by others. Certain non-historic equipment, and modern construction shall be included in select demolition at this building. The hazardous material investigation and abatement on the rest of the building must be conducted in a careful and sensitive manner to protect the existing structure and historic fabric to the extent possible.

The former Blacksmith Shop will be offered for sale and removal from the property, after a HABS documentation is completed. Certain elements of the building, including boards bearing the marks of branding irons produced at the shop must be preserved for historic interpretation and use. Therefore, hazardous material investigation and abatement on the building must be conducted in a careful and sensitive manner to protect the existing structure and historic fabric to the extent practical. If there are no successful offers to purchase and relocate the Blacksmith Shop, it shall be demolished and removed from the site.

Other structures shall be demolished after hazardous material abatement has been completed to the extent necessary for mass demolition, and removal from the site.

Each structure shall be evaluated for presence of asbestos and lead, lead-based paint, pesticides, mercury and other hazardous materials expected to be found in such buildings. If asbestos-containing materials, or other hazardous materials were found to be present, the RMP shall incorporate provisions for the materials to be abated by a certified asbestos abatement contractor and/or hazardous materials abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District, or other regulatory agencies. If lead-based paint is identified, the RMP shall incorporate Federal and State construction worker health and safety regulations to be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified, the RMP shall incorporate the removal by a qualified lead abatement contractor and disposal in accordance with existing hazardous waste regulations.

- Mold survey:  
For the historic Grammar School property (160 North Main Street), a qualified environmental professional shall investigate and evaluate the mold contamination at the site, in accordance with guidelines in US EPA's "Mold Remediation in Schools and Commercial Buildings" (EPA Document 402-K-01-001). If mold contamination is identified, the RMP shall include provisions for the remediation by a qualified contractor. A final mold remediation report shall be produced to document the remediation and describe any maintenance measures required to prevent recurrence of the mold contamination.

- Prepare plans, specifications, and schedules to implement the RMP for the North Main Street Development project site, including a Storm Water Pollution Prevention Plan, (SWPPP), Best Management Practices (BMPs) and provisions for bio-swales and other temporary measures to filter, and or protect streams from degradation.
- All work shall be accounted for and billed based upon separate parcels, or groups of parcels, identified by former owner(s). Accounting for costs associated with the remediation, abatement and clean-up of the properties will be subject to reimbursement based upon agreements between the City and others. Therefore, a true and accurate accounting must be kept of the work performed on each parcel. Prepare cost estimates identified by APN for the parcels included in the North Main Street Development project site. All plans and specifications for abatement work shall also require a clear accounting, using separate line items for the hazardous material abatement for each parcel.
- Provide construction support services and post-construction support.

### **PURPOSE AND INTENT OF THE RMP**

The purpose of developing the Risk Management Plan (RMP) is to create a comprehensive plan that addresses the abatement, mitigation of any contaminant of concern, or hazardous material that would either require special precautions during the construction of the new improvements, or negatively affect the value and use of the property. The intent is to:

- Remove and dispose of any hazardous material on the site to the extent practical and reasonably cost effective.
- Permanently encapsulate, under garage slabs, any hazardous material that cannot be reasonably removed from the site.
- Provide monitoring, as necessary to report on bio-remediation of any contaminant that cannot reasonably be removed or reduced, and if necessary to design a treatment approach that will have minimal impact on the City's use and enjoyment of the site as a library and related Midtown uses.

The removal, encapsulation or other abatement of hazardous materials on the site must be done prior to the start of development of the North Main Street Projects. Time is of the essence.

The site must be certified by a competent licensed Industrial Hygienist as safe and appropriate for:

- Normal and/or conventional construction activities, without the use of any special breathing apparatus, clothing or gear, due to hazardous materials, other than those necessary for construction.
- Normal use by the general public, including children and elderly people, undiminished by the presence of any hazardous material, other than those normally encountered outside in a park or inside in a modern library.

## **SELECTION PROCESS**

The Consultant must comply with the following eligibility requirements:

- The work location of the Project Engineer or Project Geologist must be reasonably within an hour's travel time of the project site. Preference is given to local business in that no reimbursement is allowed for travel time, meals and/or accommodations.
- The consultants' key personnel identified in the proposal shall be dedicated to the project for the entire duration. The City shall allow substitutions only in the event the employee leaves the firm, or is otherwise unable to perform the job duties;
- Consultant shall be capable of producing construction drawings in AutoCAD version 2004 format and preparing or converting specifications to Windows Microsoft Word version 2000;
- Consultant must perform a minimum of 51% of the dollar value of the design contract;
- Consultant shall agree to execute the North Main Street Development Environmental Services Agreement (attached) for these consultant services. This agreement contains indemnification provisions that require the consultant to indemnify and hold harmless the City against any and all liability, as indicated in the sample consulting services agreement.

The following is the selection process to be used for determination of the most qualified consultant for this project:

1. The City will review and rank the written proposals, based upon the following:
  - the overall experience of the firm, project manager and project team, and unique qualifications
  - record of successful similar work performed for other cities/public agencies by the project manager and project team.
  - other factors that may distract the expertise of the firm.
  - completeness and responsiveness to this RFP.Based on this review, and verification of written proposal materials submitted, the Consultant Review Board, which may consist of City staff and outside agency representatives, will develop a short list of the top Consultants, who can continue with the selection process. The City will notify the consultants not included in the shortlist in writing and no further consideration of their proposals will be made.
2. Those Consultants who succeed in ranking high enough to make the short-list, will be notified by phone and fax, with a scheduled time for their interview (see schedule below.) The interview may be videotaped.
3. Based upon this first interview, the highest-ranking consultants will be qualified for consideration of the current North Main Street Development projects, as well as any future related projects over the next 2 years. Consultants may be requested to interview a second



and final time. The City may select a single consultant or one for each NMSD project. The total time allowed for the interview may be between 40 to 60 minutes. The interviews may be videotaped.

4. A consultants' final placement on the list will be based on the rating of the selection committee and completion of satisfactory reference checks. The selection committee may make a recommendation to the City Council, which shall make a final determination and approval of the consultant selected. The selected consultant is expected to execute the Agreement within two weeks of written award notification. The City expects to have the selected Consultant and their team on board, ready to commence the work, in July 2005.

### **TIME SCHEDULE**

The time schedule for receiving proposals, selecting consultants, conducting interviews for the selection of the consultant firm to perform the work is as follows:

Issue RFP	May 23, 2005
Pre-Proposal Conference	May 31, 2005

Pre-proposal conference will commence at *2 PM in the City Hall Committee Room* at Milpitas City Hall and will continue at the project site on North Main Street. Consultants are required to attend the pre-proposal conference.

Proposal Submittal Due	June 6, 2005
Interview with Project Staff	June 13, 2005
Council Agreement approval	July 5, 2005
Agreement Executed & Notice to Proceed	July 12, 2005
Complete Risk Management Plan, Design & Bid Documents	September 2005

### **PROPOSAL REQUIREMENTS**

Consultants choosing to respond to this RFP are required to submit all of the information outlined in this section and Attachment A, Project Scope and Phasing. Firms must indicate their willingness to execute the North Main Street Development Environmental Services Agreement (Attachment B). Consultant must submit any requested changes to the Agreement with the RFP response. The City reserves as its sole right to accept, reject, or modify any requested revisions. The City shall not consider any requested revisions to the Agreement requested by the Consultant after submission of the proposal. However, the City reserves the right to modify and refine the scope of work, prior to execution of the contract. The Consultant is encouraged to revise the scope of work based on their expertise to create a comprehensive and complete approach that achieves the goal of clearing the site for construction and proposed end use.

In addition, interested Consultants are encouraged to submit any additional information available that demonstrates any distinctive qualities of their firm or team, that positions them to be uniquely qualified for this opportunity.

To be responsive to this RFP, proposals shall be submitted in *two separate packages*, and specifically address all the information described as follows:

**Proposal Package #1:**

The proposal shall be bound with tabs identifying each section. The body of this statement (sections 1 through 4) shall not exceed 25 pages. Resumes for the proposed project team and subconsultants shall be provided in the appendix (Section 5).

The following information must be provided in the proposal so that the City may review your firm's qualifications and approach to this type of project:

**Section 1 Project Team and Qualifications**

- The names and addresses of the Engineering/Geotechnical Consultant and subconsultant firms on the team. Provide an organization chart of your proposed project team.
- The name and unique qualifications of the Project Manager (individual responsible for the day-to-day design and management of the Project) and how long this individual has worked with the proposed project team (staff and subconsultants.)
- Experience of the Consultant and team in providing the requested scope of services, specifically referencing governmental type projects that are similar in size, type and scope to this project. Include the date of the project, project budget, contact person and phone number of that person who can provide information regarding the Consultant's work.
- A listing of projects and references for projects that the Consultant believes would address their qualifications for this assignment. Limit references to 5 projects including those requested in the item above (and exclude references over 10 years old.) Include a matrix of these similar projects showing comparison of: 1) final construction cost with client's budget; 2) Consultant's estimate; and 3) actual bid price of construction contract.
- A listing and brief description (1 Paragraph) of the Consultant's current projects, status and time of completion.
- Provide names and qualifications of other key personnel, including subconsultants, to be used on this project, and their capacity or role, including applicable descriptions and dates of similar work these persons have been directly involved with. Include specifics about the duties performed.
- A list of pending or completed litigation within the past five years related to the Consultant's, or subconsultants work related to services performed by the Consultant or its subconsultants.

- Consultant shall provide a statement indicating the sample North Main Street Development Environmental Services Agreement has been reviewed and if selected by the City, the Consultant shall execute this agreement and begin work immediately.

## Section 2 Project Understanding and Challenges

- This section shall define the Consultant's understanding of the proposed draft scope of work, at a minimum, and shall describe the work proposed by the consultant; The consultant is encouraged to review the draft scope of work as a minimum level of commitment, and revise, refine or recommend additional or optional scope of work for consideration. Particularly indicate revisions to the draft scope of work that illuminate the consultant's understanding and experience in performing similar work.
- Describe anticipated challenges that may prevent completion within the timeframe set forth in this RFP and proposed strategies to address these challenges.

## Section 3 Project Management

- Describe your firm's project management and cost control system, which you propose to use for your project team and subconsultants, to maintain the project schedule and budget.
- Define your firm's Quality Assurance/Control Program and what measures you will take to delivery a high quality project to the City.

## Section 4 Project Workplan

- Describe your firm's technical work plan for this project. This description should include but not be limited to:
- A brief narrative of the technical approach to be followed and the quality assurance program to be used;
- A detailed work plan outlining the proposed work steps for each of the major tasks;
- Provide a detailed time commitment (schedule) for completion of each of the various phases and major tasks, and completion date of the Risk Management Plan and construction documents. Allow sufficient time for City reviews and plan revisions.

## Section 5 Appendix

- Provide resumes for all project team members.

Five complete copies of the proposal must be furnished. Failure to comply with these requirements may be cause for a firm's proposal to be considered non-responsive; and therefore be rejected. The City reserves the right to waive any minor proposal irregularities.

**Proposal Package #2:**

The Consultant shall submit a fee proposal in a separate sealed envelope. This fee proposal shall be submitted to the City Clerk's office and will not be opened until the Consultant selection has been made. Fee proposals should be detailed by separate parcel and by subconsultant. Should the fee be higher than budgeted, the City reserves the right to either negotiate these fees, or consider the next qualified consultant whose proposal is within the City's budget. Fee proposals shall not be public records except for the fee proposal for the contract recommended for award by the City.

The City reserves the right to adjust the scope of work and associated fees prior to execution of the contract. The City also reserves the right to amend the contract or terminate the contract.

**Submit Proposal packets no later than 10:00 am on June 6, 2005, at the Public Service Counter, Milpitas City Hall.**

**Address packets as follows:**

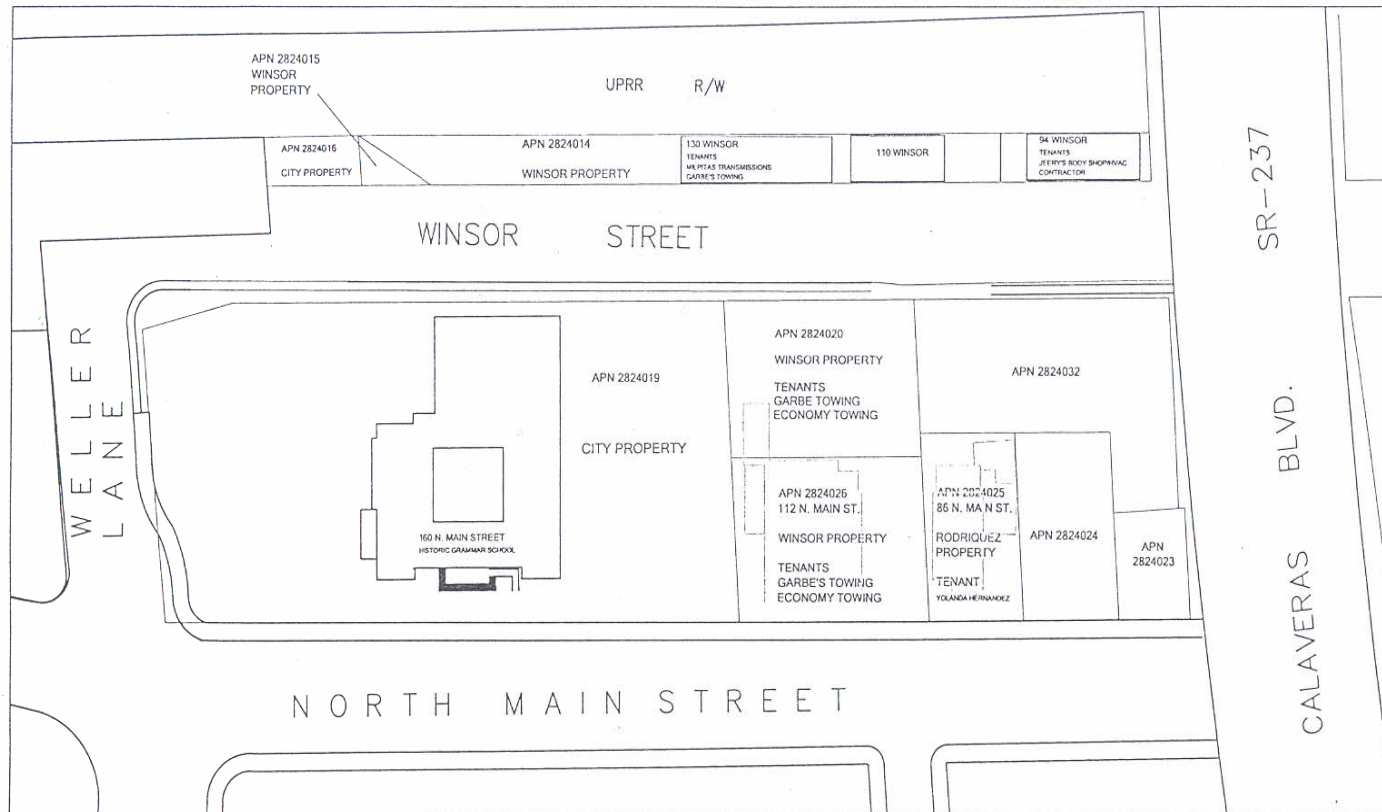
*North Main Street Development  
Environmental Services Proposal packet #1- Sections 1 thru 5  
City of Milpitas  
City Engineer's Office  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Lissette Morales*

*North Main Street Development  
Environmental Services Proposal packet #2- Fee proposal  
City of Milpitas  
City Clerk's Office  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Mary Lavelle, City Clerk*

***Note: Proposals received after the specified time and date will not be accepted.***

If you have any questions or desire additional information, contact Lissette Morales, (408) 586-3409 or email [lmorales@ci.milpitas.ca.gov](mailto:lmorales@ci.milpitas.ca.gov).

**EXHIBIT A North Main Street Development site map**



APN	Address	Description
28-24-014	130, 110, 94 Winsor Ave	Milpitas Transmission/ Jerry's Auto Body
28-24-015	None	Milpitas Transmission yard
28-24-016	None	Small storage yard
28-24-017	198 Winsor Ave	Apton
28-24-019	160 N. Main St	Historic Grammar School
28-24-020	None	Lot behind the blacksmith shop
28-24-025	86 N. Main St	Bungalow
28-24-026	112 N. Main St	Blacksmith shop
22-08-003	None	Vacant parcel next to Calaveras
22-08-041	163 N. Main St	DeVries house
22-08-042	169 N. Main St	Vacant parcel next to DeVries house

## **EXHIBIT B**

### **SCOPE OF CONSULTANT'S DUTIES AND SERVICES**

CONSULTANT shall perform professional services related to the analysis, design, and preparation of a comprehensive Risk Management Plan (RMP), specifications, cost estimates, and schedules including construction support services and post-construction support for the North Main Street Development Projects at North Main Street, in the City of Milpitas, California, (PROJECT). CONSULTANT shall provide complete, professional, high quality services and products. CONSULTANT shall also provide consultation to City staff and others who are involved with the PROJECT and shall provide expertise, guidance, advice and assistance in completion of the PROJECT.

#### **SECTION 1 GENERAL:**

The CITY'S project staff (PROJECT MANAGER) shall manage the design of this PROJECT and performance under this AGREEMENT. CONSULTANT shall receive final direction from the PROJECT MANAGER or authorized designee only. The PROJECT MANAGER shall resolve any conflicting direction from other groups, departments or agencies.

Whether described in more detail below or not, Consultant shall perform all work necessary to complete the design of the PROJECT. Consultant will provide a 100% complete design that shows all construction work and all details so that the design will permit accurate bids and that no change orders will be necessary during construction due to defects, errors, or omissions in the design.

All of the services to be performed by the CONSULTANT under this AGREEMENT from the inception of the AGREEMENT until termination of the AGREEMENT shall meet the professional standards and quality described in the AGREEMENT. The design prepared by CONSULTANT shall provide for a completed PROJECT that conforms to all applicable codes, rules, regulations and, guidelines or applicable official interpretations thereof that are in force at the time such documentation is prepared, including but not limited to State and local building code requirements.

#### **General Performance Requirements:**

1. CONSULTANT shall coordinate this scope of all services with the CITY and CITY'S separate consultants and contractors as needed and as directed by CITY.
2. The schedule for the performance of the CONSULTANT'S services included in EXHIBIT C may be adjusted as the PROJECT proceeds by mutual agreement. CONSULTANT shall manage the CONSULTANT'S services, manage its SUBCONSULTANTS and administer the Project. CONSULTANT shall consult with the CITY, research applicable design criteria, communicate with members of the Project Team, and issue biweekly progress reports or as otherwise directed by the CITY.
3. CONSULTANT shall prepare, and periodically update, a Project schedule for the CITY'S review. The Project schedule shall identify milestones, dates for decisions required of the CITY, services furnished by the CONSULTANT and the CONSULTANT'S SUB-CONSULTANTS, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the CONSULTANT,

completion of documentation provided by the CONSULTANT, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by City.

4. CONSULTANT shall submit documents to the CITY for purposes of review and evaluation by the CITY. CONSULTANT shall address all comments provided by the City and make revisions as required by the CITY for each task in a timely manner. In responding to review comments and revising the design documents CONSULTANT shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent. Submittals that have not addressed prior review comments will either be accepted as an intermediate submittal, not having satisfied the milestone, or may be rejected, until the submittal addresses the prior review comments.
5. CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
6. Upon request of the CITY, CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.
7. CONSULTANT shall identify any site-related discrepancies from survey reports and other site reports that might affect the Project.
8. CONSULTANT shall prepare team Organizational meetings to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
9. The CONSULTANT shall be responsible for reviewing, coordinating, integrating and preparing all construction documents of all subconsultants; obtaining the stamp and signature on the plans of those consultants and incorporating into each set of plans; and submittal to the CITY of the plans, calculations, reports and other documents prepared by subconsultants. Plans, which are prepared by subconsultants and not incorporated into sets of complete plans, will not be accepted by the CITY and will not satisfy achievement of the milestone.
10. CONSULTANT shall coordinate with the County of Santa Clara Department of Environmental Health and the Santa Clara Valley Water District to satisfy requirements for approval of the Risk Management Plan.
11. CONSULTANT shall design and detail all aspects of the Project as their work, and limit the amount of design and detailing required during construction or required by the Construction Contractor, to those items specifically enumerated in the CONSULTANT'S proposal and incorporated into this contract.
12. All work shall be done in an electronic format, appropriate to the work product, including (AutoCAD) drawings, plans, elevations, sections, diagrams, details, etc., (Word) specifications, reports, and other narrative, (PowerPoint) presentations, (Excel) Spreadsheets, (Primavera or Project) schedules, and other appropriate digital electronic formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a hard (Mylar or paper) copy.
13. Consultant shall be responsible to design the PROJECT to the approved construction budget. The CONSULTANT shall provide an Estimate of Probable Construction Cost at every major design submittal, to demonstrate the design is within the approved construction budget.

## **SECTION 2: SCOPE OF SERVICES**

The Consultant shall provide in-house personnel or subconsultants to perform the services described below and in this AGREEMENT, including but not necessarily limited to:

- Environmental Investigation;
- Analysis, design, and preparation of a Risk Management Plan (RMP);
- Coordination with Santa Clara County Department of Environmental Health (SCCDEH) and Santa Clara Valley Water District (SCVWD);
- Asbestos and lead-based paint survey;
- Mold survey;
- Preparation of specifications, cost estimates, and schedule;
- Construction support services;
- Post-construction support;
- Civil Engineering;
- Code Compliance and associated documentation;
- Cost Estimating;
- Environmental Design;
- Geotechnical Engineering;
- Land surveying.

### **TASK #1: EVALUATION**

- 1.1 CONSULTANT shall meet with the design consultants for the Library and Parking Garages to review environmental issues at each site and address how the RMP will address these issues.
- 1.2 CONSULTANT shall review all relevant information available about the sites and conduct an environmental investigation at the site in accordance to standards that may apply to prepare the site for the proposed use.
- 1.3 CONSULTANT shall meet with CITY Building and Planning departments to confirm CEQA review and approval requirements.
- 1.4 CONSULTANT to prepare Team Meeting to review and confirm site analysis studies.
- 1.5 CONSULTANT to prepare remediation alternatives based on the results of the environmental investigation and risk assessment.
- 1.6 CONSULTANT shall revise and finalize the CITY's selected alternate to satisfy the requirements of Santa Clara County Environmental Health Services, the Santa Clara Valley Water District and other applicable regulatory agencies.
- 1.7 CONSULTANT shall recommend and advise CITY of measures to be considered to create a complete and comprehensive plan to address, mitigate and abate hazardous materials on the project site. CITY is relying on CONSULTANT's professional expertise to achieve the goal of clearing the site for construction and proposed end use.

### **TASK #2: RISK MANAGEMENT PLAN**

- 2.1 CONSULTANT shall coordinate and manage its subconsultants and coordinate with the City, City's representatives and key departments throughout the Risk Management Plan development.
- 2.2 CONSULTANT shall include SWPPP, BMPs and provisions necessary to protect streams from degradation in the Risk Management Plan.



- 2.3 The CONSULTANT shall establish soil and groundwater mitigation and control specifications for grading and construction activities at the site, including health and safety provisions for monitoring exposure to construction workers, procedures to be undertaken in the event that previously unreported contamination is discovered, and emergency procedures and responsible personnel in the Risk Management Plan.
- 2.4 The CONSULTANT shall include procedures for managing soils and groundwater removed from the site to ensure that any excavated soils and/or dewatered groundwater with contaminants are stored, managed and disposed of in accordance with applicable regulations and permits in the Risk Management Plan.
- 2.5 The CONSULTANT shall describe groundwater monitoring wells that will be affected by the construction activities, provide procedures for the proper abandonment of those wells, and provide locations for replacement monitoring wells, if warranted, within the Risk Management Plan.
- 2.6 The CONSULTANT shall also include an Operations and Maintenance Plan component, to ensure that health and safety measures required for future construction and maintenance at the project site shall, if necessary, be enforced in perpetuity.
- 2.7 The CONSULTANT shall include within the Risk Management Plan provisions for the use, storage, disposal, and transport of hazardous materials during construction activities to be performed in accordance with existing local, State, and federal hazardous materials regulations, including manifests for transport or disposal.
- 2.8 The CONSULTANT shall evaluate each structure for presence of asbestos and lead, lead-based paint, pesticides, mercury and other hazardous materials expected to be found in such buildings. If hazardous materials are found, the CONSULTANT shall incorporate construction worker health and safety regulations to be followed during renovation or demolition activities and provisions for hazardous materials to be abated by a certified hazardous materials abatement contractor and in accordance with the regulations and notification requirements of the regulatory agencies.
- 2.9 The CONSULTANT shall investigate and evaluate the mold contamination at the historic Grammar School building in accordance with US EPA guidelines. If mold contamination is identified, the CONSULTANT shall include provisions for the remediation by a qualified contractor. The CONSULTANT shall produce a final mold remediation report documenting the remediation and any maintenance measures required to prevent recurrence of the mold contamination.
- 2.10 The CONSULTANT shall coordinate the Risk Management Plan with the selective demolition plan for the historic Grammar School building, by others, to be included in the Construction Bid Set. The CONSULTANT shall include demolition plan for other structures to be demolished after hazardous material abatement has been completed to the extent necessary for mass demolition, and removal from the site with the Construction Bid Set.
- 2.11 The CONSULTANT shall include the demolition of the Blacksmith Shop, upon notice from CITY, if there are no successful offers for purchase of the building.
- 2.12 CONSULTANT shall manage Team Meeting: Present Risk Management Plan package to CITY for review and approval.
- 2.13 CONSULTANT to submit the complete construction documents package to the City of Milpitas Building and Fire department, and other regulatory agencies as required for review, approval.

- 2.14 CONSULTANT shall refine and further develop the approved Risk Management Plan into a Construction Documents package for bidding.
- 2.5 CONSULTANT shall prepare all documentation, plans and reports for regulatory case closure of 130 Winsor Street site per Santa Clara County Department of Environmental Health and Santa Clara Valley Water District.
- 2.6 Deliverables:
  - a. The CONSULTANT shall provide a Construction Documents package based on the approved Risk Management Plan, CITY reviews, and updated budget for the Cost of the Work. The Construction Documents shall not be submitted until the design is within the approved construction budget. The Construction Documents packages shall set forth in detail the requirements for construction of the project.
  - b. During the development of the Construction Document package, the CONSULTANT shall prepare the Project Manual that includes the Conditions of the Contract for Construction, Specifications, and bidding requirements and sample forms furnished by the CITY.
  - c. CONSULTANT shall submit six sets of reproducible documents and one set of electronic documents at completion of Construction Documents for review and approval by the CITY and for bidding. A full size Mylar set, wet stamped by all the appropriate licensed design disciplines are required for bidding.
  - d. CONSULTANT shall include detailed technical specifications, which are coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines.
  - e. CONSULTANT shall provide final estimate of probable construction costs with the complete construction documents in coordination with CITY's Project Manager for review by CITY.
  - f. CONSULTANT shall submit permitted plans to the Engineering Department for Bidding.
- 2.7 One or more "Independent Checks" of the plans, specifications and bid documents may be performed by an independent party commissioned by the City prior to advertising for construction bids. CONSULTANT shall incorporate any revisions or comments from these reviews in the final bid documents. These checks may include architectural peer reviews and/or constructability reviews. These independent checks are to be performed strictly for the benefit of the City, and they shall not relieve the CONSULTANT from its obligations under this Agreement, including but not limited to its obligation to provide a complete and accurate set of plans, specifications and bid documents. The City is not obligated to perform any independent check, and the CONSULTANT shall not rely upon it for any quality or quantitative check or review.

### **TASK #3: BIDDING AND AWARD:**

- 3.1 CONSULTANT shall assist CITY during bid solicitation process.
- 3.2 CONSULTANT shall prepare one reproducible bid package for CITY, and will make available to the CITY an electronic version of the Construction Documents.
- 3.3 CONSULTANT shall provide bid phase services, as requested by the CITY, through award of the Contract for Construction for the following:
  - a. Responses to bidders' inquiries.
  - b. Preparation of addenda.

- c. Attendance at one (1) pre-bid meeting.
- d. Evaluation of bids.
- 3.4 Deliverables:
  - a. CONSULTANT shall submit one (1) set of reproducible and one (1) set of electronic Risk Management Plan Construction Documents package revised with CITY'S reviews and plan check, including Fire Department, ready for Bid, Award, and Construction.

**TASK #4: CONSTRUCTION ADMINISTRATION:**

- 4.1 CONSULTANT shall coordinate all of its construction administration services with CITY'S Project Manager, who will be responsible for the management of the construction project. The CONSULTANT shall provide administrative services as set forth below and pursuant to the General Conditions of the Contract to be awarded by CITY for construction of the project.
- 4.2 CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction to the construction contractor and terminates at the conclusion of the warranty/guarantee periods for the contractor's work.
- 4.3 CONSULTANT shall be a representative of and shall advise and consult with the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have the authority to act on behalf of the CITY only to the extent provided in this Agreement or any properly executed amendment to this Agreement. CONSULTANT'S services are for the sole benefit of CITY. During all communications and other services being provided under this Agreement, Consultant shall be the City's representative and fully represent the City's interests against the interests of others (including Consultant and its subconsultants).
- 4.4 Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 5 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 4.5 CONSULTANT shall review all requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information ("RFI") about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 4.6 Consultant shall respond in writing to all RFI's within 3 calendar days, and if the RFI requires a quicker response due to the RFI's effect on the construction, then the City's Project Manager shall designate an earlier deadline for response (but no sooner than 24 hours after the RFI is delivered or faxed to Consultant) and Consultant shall timely respond.
- 4.7 Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents. However, the CITY shall make the final determination regarding all such matters.
- 4.8 CONSULTANT shall visit the site at intervals appropriate to the stage of the Contractor's operations and coordinate visits with the CITY'S Construction Management consultant, or as otherwise agreed by the CITY, and the CONSULTANT in order:

- a. To become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed.
  - b. To notify the CITY of observed defects and deficiencies in the Work, and,
  - c. To determine in general if the visually observable Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
- 4.9 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.
- 4.10 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.
- 4.11 The CONSULTANT shall advise the CITY if the CONSULTANT identifies work that does not conform to the Contract Documents.
- 4.12 SUBMITTALS:
- a. The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data Mock Ups and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay to the Work or in the activities of the CITY, Contractor or separate contractors, while allowing sufficient time to permit adequate review. CONSULTANT'S review and action on such submittals shall not relieve or diminish the Contractor's primary responsibility.
  - b. The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
  - c. If in the event that professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- 4.13 CHANGE ORDERS:
- a. The CONSULTANT shall assist the CITY'S Project Manager in the preparation of Change Orders and Construction Change Directives for the CITY'S approval and execution in accordance with the Contract Documents. If necessary, the CONSULTANT shall prepare, submit to CITY for approval, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in this Section 5.15, Paragraph B.
  - b. The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract price or time of completion. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable recommendation to CITY without extensive investigation or preparation of additional drawings or specifications. If the

CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the CONSULTANT may recommend to the CITY that the requested change be denied.

- c. If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those changes into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.
  - d. The CONSULTANT shall maintain all records relative to changes in the Work.
- 4.14 Upon completion, CONSULTANT shall provide copies of the updated electronic documents to the Contractor, who will use their as-built documents to incorporate all modifications to the Record Documents per this Agreement.
- 4.15 PROJECT COMPLETION:
- a. The CONSULTANT shall conduct observations to determine the actual date of final completion; shall receive from the Contractor, and forward to the CITY for the CITY'S review and records, written warranties, operations and maintenance manuals, as-built documents, and related documents required by the Contract Documents and assembled by the Contractor.
  - b. The CONSULTANT'S observation for Final Completion shall be conducted with the CITY'S Project Manager to check conformance of the Work with the requirements of the Contract Documents package and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

#### **TASK #5: RECORD DOCUMENTS AND PROJECT CLOSE-OUT:**

- 5.1 CONSULTANT shall prepare specifications to require that the Contractor prepare as-built drawings and specifications throughout the Project construction based on record field construction documents package. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the contractor's as-built drawings and specifications, and shall return them to contractor for revision if they are not accurate and complete. Once approved by CONSULTANT as complete and accurate, then the CONSULTANT shall prepare and sign the Record Drawings in the appropriate area and submit both a hard copy on mylar and an electronic copy on Compact Disc (CD) to the City within 25 days.
- 5.2 CONSULTANT shall submit required certifications to regulatory agencies.

#### **SECTION 3: ADDITIONAL MISCELLANEOUS REQUIREMENTS:**

##### **Consultant's Use of Subcontractors:**

If the Consultant intends on using subconsultants or subcontractors to perform work associated with this contract within the City's Right of Way, the Consultant shall ensure any subconsultant/subcontractor they utilize for work specified under this agreement are appropriately licensed and bonded for the work involved. Use of unlicensed contractors is

prohibited. The Consultant shall submit copies of all licenses for proposed subconsultants/subcontractors to be used.

**Project Plan and Specification Preparation:**

The Consultant shall prepare Project Plans using the City's Standard Title Block to be located at the bottom right of each Plan sheet. Final signed plans shall be completed using Mylar. Project Specifications shall be prepared using the City's standard front end document – Sections A, B, C, D. The City also has several Technical Specification Sections (E) which are also standard to be used on each project. Specifications shall be created in conformance with the State of California Department of Transportation Division of Construction guidelines. Specifications shall be in CSI format. The construction schedule shall be specified in Calendar Days.

**Storm Water Pollution Prevention and Erosion Control:**

Consultants shall ensure their project design is compliant with latest City, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines, and ensure the design can be constructed in conformance with these guidelines.

**Quality Control/Quality Assurance (QC/QA):**

In addition to the standard of care described in this Agreement, including but not limited to Section 1.2, the Consultant shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality, free of technical and grammatical errors. Consultant shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- QC/QA program in effect for the duration of this contract;
- Design and calculations are independently checked, corrected and backchecked by the CONSULTANT;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.
- City reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the Consultants sole responsibility;

**Project Meetings:**

CONSULTANT is advised that the number and nature of meetings described elsewhere in this agreement, are intended to provide a minimum level of meeting attendance required. The Consultant is required to attend weekly project management meetings to report on project progress and coordination with other project elements. During construction, the Consultant is required to attend, assist, consult, provide clarification and resolve construction problems related to the design, plans and/or specifications, at weekly construction coordination meetings.

Exhibit C

**SAMPLE**  
**NORTH MAIN STREET DEVELOPMENT PROJECTS**  
**ENVIRONMENTAL SERVICES AGREEMENT**

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND**

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THIS AGREEMENT for Environmental Consulting Services regarding the new North Main Street Development Projects ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and \_\_\_\_\_ ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2005 (the "Effective Date") in Milpitas, California.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, 200\_, and Consultant shall complete the work described in Exhibit A - Part 1, (Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A – Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

**1.2 Standard of Performance.** The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represent themselves as a recognized leader and experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare (a) bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce a 100% Construction Documents ready for bid within the schedule, and prior to bidding. The Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 5% of the total construction bid price.

**1.3 Assignment of Personnel.** Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to

perform the job duties. The new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from City of such desire of City, reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

#### **1.4 Time.**

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A.

### **Section 2. COMPENSATION.**

City hereby agrees to pay Consultant a lump sum amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for all work set forth in Exhibit A, Part 1; plus all Reimbursable Expenses incurred in performing the work, as described in Exhibit B, not to exceed \_\_\_\_\_ (\$\_\_\_\_\_); plus Additional Services, if any, not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Total Compensation shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

#### **2.1 Completion On Schedule.**

Consultant and City agree that the Consultant has developed both the time schedule and the fee schedule for each phase of work described in Exhibit A. Therefore, the Consultant shall complete each phase on schedule and City shall pay the full lump sum for each phase, which is divided into a 95% Fee for completion and a 5% Fee for early or on-time completion. On-time completion is completion by the scheduled date for that phase. If the Consultant completes work ahead of schedule this will provide float in the schedule as a Consultant resource, but will not change the scheduled dates of subsequent tasks. If the Consultant completes a phase after the scheduled date it does not change the scheduled dates for subsequent tasks except as provided for herein.

If any phase is completed late Consultant forfeits the 5% Fee amount. The Consultant is expected to add resources and take whatever measures are necessary to accelerate the work to meet the next phase's scheduled date. If the Consultant recovers the schedule by completing the next or subsequent tasks by their scheduled dates, any otherwise previously forfeited 5% Fee amounts will be paid to Consultant.



If any phase is not completed within one week after the scheduled date, the City may subtract the amount of seven thousand dollars (\$7,000.) per week, from the 95% Fee as liquidated damages for each week that completion of the phase exceeds the scheduled date. Each week paid, as liquidated damages, will add a week to the remaining phase's scheduled dates.

## **2.2 Invoices**

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:

- Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A tabulation of Reimbursable Expenses for the billing period;
- Total invoice amount, total billed to date, and remaining amounts, for each phase.
- Certification of the lack of compensation on the Project other than compensation from the City;
- False Claims Act certification in the form set forth in Exhibit J;
- The Consultant's signature.

## **2.3 Monthly Payment**

City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

### **2.3.1 Retention**

City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the bidding phase after a Successful Construction Bid is received for the Project. For the purposes of this paragraph, a Successful Construction Bid is a responsive bid within 110% of the Final Construction Bid Estimate, or a bid that is awarded by the City Council. If the project is not issued for bid within 60 days of Building Division's approval of the plans and specifications for issuance of a Building Permit, the duration of such plan approval to be in accordance with City standard plan check review time, City will release full retention.

### **2.3.2 Additional Withholding**

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

## **2.4 Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.9 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

- 2.5 **Additional Services.** A contingency amount of one \_\_\_\_\_ dollars (\$\_\_\_\_\_) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose All-Urban Consumers Price Index.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded without written authorization of the City and an appropriate increase in the Reimbursable Expense Budget. Travel, food, and accommodations are not reimbursable expenses.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.9 **Payment upon Termination.** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all accrued retention to-date and the current month's payment as liquidated damages for the loss to the City to administer the completion of the work by others.
- 2.10 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is beyond the scope of work of the present contract phase. Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.
- 2.10 **Responsibility for Additional Costs.** The Consultant is required to design the project within the City's final construction budget within the cost plan shown in Exhibit D, which defines the anticipated bidding criteria. If the lowest responsible bid for the construction of the Project exceeds the last approved Consultant's bid estimate (Final Construction Bid Estimate) by more than 10%, and City directs Consultant to revise the bid documents for the purpose of reducing the Project cost, Consultant shall make said changes with no increase in fee. If the Project is then re-advertised for bid, Consultant shall provide the additional bid services at no extra cost.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in Exhibit K and only under the terms and conditions set forth therein.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by

the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

If the City provides Owner Controlled Insurance for the Project, or other comprehensive wrap-around insurance, Consultant shall be required to pay deductible for any insurance claim that Consultant would have normally paid if the Consultant were providing the insurance, provided that the deductible shall not exceed \$150,000 per claim. If City provides insurance, Consultant shall reduce their fee by the amount of savings, if any, that it realizes by the City providing insurance rather than Consultant.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 [check form #s] (ed.1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Consultant, within the fee described in Exhibit B shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim. City may provide Owner Controlled Insurance or a wrap-around insurance policy. If City does not provide insurance, Consultant shall increase insurance limits up to five million dollars (\$5,000,000.) and City shall pay cost of additional premium to increase such insurance, as a separate cost amendment, to increase such insurance.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**4.4.3 Notice of Reduction in or Cancellation of Coverage.** An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.

**4.4.4 Additional insured; primary insurance.** Except for the professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of

Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 4.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

- 4.4.6 Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.

- 4.4.7 Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

- 4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement, for cause.

## **SECTION 5 INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed

in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant

represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the

breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:

- 8.6.1** Terminating the Agreement;
- 8.6.2** Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;
- 8.6.3** Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
- 8.6.4** Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1** **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2** **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3** **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1** **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall



be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.3 Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.10 Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.

**10.11 Contract Administration.** This Agreement shall be administered by the Assistant City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Assistant City Engineer or designee.

**10.12 Notices.** Any written notice to Consultant shall be sent to:

Consultant Name  
Address  
Attention:

Any written notice to City shall be sent to:  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Greg Armendariz

with Copy to:  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Mark Rogge

**10.13 Professional Seal.** In accordance with licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.

**10.14 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**10.15 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule, Hourly Rates
Exhibit C	Personnel, The Professional Team
Exhibit D	Cost Plan, Construction Budget, Target for final Estimate of Probable Construction Costs
Exhibit E	Certificate of Insurance, Certificate of Workers Compensation Insurance
Exhibit G	Invoice or Claim Declaration
Exhibit H	City Support
Exhibit I	Completeness & Quality Considerations

Exhibits Incorporated by reference:

The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Charles Lawson, Interim City Manager

\_\_\_\_\_  
Principal/President  
\_\_\_\_\_.

MILPITAS REDEVELOPMENT AGENCY

\_\_\_\_\_  
Charles Lawson, Interim Executive Director

\_\_\_\_\_  
Principal/Secretary,  
Chair Board of Directors  
\_\_\_\_\_.

Attest:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Steven T. Mattas, City Attorney/Agency Counsel